

Memorandum of Understanding

Dated 31 / 1 / 2019

Parties

Name	The Secretary to the Department of Health & Human Services (VIC) (DHHS)
Address	50 Lonsdale Street, Melbourne, Victoria 3000
Short name	DHHS

Name	The Secretary, NSW Health (New South Wales) (NSW Health)
Address	73 Miller Street, North Sydney, New South Wales 2060
Short name	NSW Health

Introduction

Albury Wodonga Health (AWH) was established under the *Health Services Act 1988* (Vic) on 1 July 2009, supported by an Inter-Governmental Agreement (IGA). The purpose of the IGA was to enable the integration of health services in Albury, New South Wales (NSW) and Wodonga, Victoria.

Noting that, as per the IGA:

- Victoria has responsibility for providing services delivered by AWH and for managing AWH's performance in the delivery of those services; and

NSW has responsibility for providing funding directly to Victoria for AWH.

- Victoria is the performance manager of AWH and manages AWH as a Victorian health service pursuant to Victorian legislative, policy and reporting requirements; and

NSW monitors Victoria in its role as a performance manager of AWH as the provider of Services to NSW residents.

- AWH must comply with legislative requirements applicable in both NSW and Victoria; and

In the event that AWH cannot comply with the legislative requirements of both NSW and Victoria at any one time due to inconsistency in those legislative requirements, the parties will work together with a view to resolving the inconsistency.

The purpose of this Memorandum of Understanding (MOU) is to clarify, in relation to the provision of mental health services within AWH, the:

1. legislative requirements for mental health services within AWH
2. role of official visitors (NSW)
3. role of community visitors (Vic)
4. the role of Accredited Persons (NSW)
5. the role of the Victorian Chief Psychiatrist
6. communication arrangements
7. handling of complaints
8. MOU review process; and
9. policies and guidelines that apply to AWH mental health services.

This MOU is made in good faith and demonstrates an intention between the parties to work collaboratively to facilitate cooperative adherence to this MOU. It is not intended to be legally enforceable and should be read subject to the IGA.

1. Legislative requirements for mental health services within AWH

As per the IGA, AWH must comply with legislative requirements applicable in both NSW and Victoria with respect to the provision of mental health services.

Health services must always comply with the laws of the state they are in.

NSW legislation

NSW Health administers the *Mental Health Act 2007 (NSW)*; *Mental Health (Forensic Provisions) Act 1990 (NSW)* and the *Mental Health Regulation 2013 (NSW)*.

Victorian legislation

DHHS administers the *Mental Health Act 2014 (Vic)* and the *Mental Health Regulations 2014 (Vic)*.

The Mental Health Review Tribunal (NSW)

This MOU recognises the Mental Health Review Tribunal established under Chapter 6 of the *Mental Health Act 2007 (NSW)* as the independent, specialist quasi-judicial body empowered to:

- a. conduct mental health inquiries,
- b. make and review orders and
- c. hear appeals about the treatment and care of people with a mental illness in NSW.

The Mental Health Review Tribunal can determine whether the criteria for involuntary mental health treatment apply to a person. It can also make determinations about whether electroconvulsive treatment (ECT) can be performed on patients in some circumstances. The Tribunal also reviews the cases of all forensic patients in NSW. The Mental Health Review Tribunal will hear matters relating to mental health services provided by AWH in NSW irrespective of where the person resides.

2. The role of the official visitors (NSW)

Section 129 (1) of the *Mental Health Act 2007 (NSW)* requires the Minister for Mental Health to appoint official visitors. Official visitors visit mental health inpatient facilities in NSW for the purpose of:

- a. referring matters raising any significant public mental health issues or patient safety or care or treatment issues
- b. acting as an advocate for patients to promote the proper resolution of issues arising in the mental health system
- c. inspecting mental health facilities

Official visitors are overseen by the Principal Official Visitor who is appointed by the NSW Minister for Mental Health.

All mental health inpatient facilities in NSW are required to be inspected by official visitors at specified intervals. Official visitors are required to report to the NSW Minister for Mental Health with respect to any matter arising from or relating to the exercise of the official visitor's functions.

Official visitors will visit declared mental health facilities in NSW which are operated by AWH.

Reports prepared following visits to AWH by official visitors will be provided to AWH and by AWH to the Victorian Chief Psychiatrist.

3. The role of community visitors (Vic)

The *Mental Health Act 2014 (Vic)* provides for the appointment of community visitors by the Governor in Council on the recommendation of the Public Advocate. Community visitors are able to visit prescribed premises to inquire into the adequacy of services and facilities provided; whether the mental health services provided are in accordance with the legislation and to assist persons receiving mental health services with the resolution of any identified issues; to seek support from other relevant bodies or services and to make complaints to the Commissioner. Community visitors have mandatory reporting requirements under the *Mental Health Act 2014 (Vic)*.

Community visitors may visit prescribed premises in Victoria which are operated by AWH.

Community visitors will not visit facilities in NSW which are operated by AWH.

4. The role of Accredited Persons (NSW)

The Secretary of NSW Health or their legal delegate may appoint a senior mental health clinician, who is not a doctor, as an Accredited Person (AP) under section 136 of the *Mental Health Act 2007 (NSW)*. Being appointed as an AP enables the clinician to make initial decisions about a person's need for involuntary admission, and assess the need for their ongoing detention, under the *Mental Health Act 2007 (NSW)*.

In order to be considered for accreditation, a senior mental health clinician with a minimum of five years clinical experience in direct mental health consumer care must complete the requisite training and assessment. Like NSW Local Health Districts (LHDs) and Specialty Health Networks (SHNs), AWH may nominate clinicians to the NSW Ministry of Health to undertake this training and assessment.

It is the responsibility of AWH to ensure that APs maintain their accreditation, including completing regular reaccreditation training as required by NSW Health. AWH must maintain records of AWH APs and monitor the performance, documentation and outcomes of APs to ensure clinical and legal standards are maintained. Any concerns over performance of individual APs are to be managed by AWH.

AWH APs may only use their powers within the geographical borders of AWH and only in NSW. If they wish to use their powers in the Murrumbidgee LHD area, they must be formally accredited by NSW Health for both AWH and Murrumbidgee. This must be first approved by both AWH and

Murrumbidgee LHD. APs have no powers under Victorian legislation and cannot perform AP duties in Victoria, even within the boundaries of AWH.

5. The role of the Victorian Chief Psychiatrist

The *Mental Health Act 2014* (Vic) provides for the appointment of a Chief Psychiatrist with the explicit function of monitoring the provision of mental health services in order to improve the quality and safety of those services. This includes mandatory reporting requirements.

The role of Victoria's Chief Psychiatrist is to:

- provide clinical leadership and expert clinical advice to mental health service providers
- promote continuous improvement in the quality and safety of mental health services
- promote the rights of persons receiving mental health services
- provide advice to the Victorian Minister for Mental Health and the Victorian Secretary of the Department of Health and Human Services about the provision of mental health services.

Under Victorian legislation, the Victorian Chief Psychiatrist may:

- monitor the provision of mental health services in order to improve quality and safety
- conduct investigations for the purpose of assessing the quality and safety mental health services
- conduct clinical practice audits for the purpose of identifying systemic issues or trends that need to be addressed to improve the quality and safety of mental health services
- conduct clinical reviews for the purpose of identifying processes and practices that need to be changed to improve the quality and safety of mental health services
- give directions in respect of the provision of mental health services
- enter premises for the purpose of fulfilling his functions under the MHA.

Under this MOU, it is recognised that:

- AWH is a designated mental health service and a mental health service provider as defined in section 3 of *Mental Health Act 2014* (Vic)
- Victoria is the performance manager of AWH and manages AWH as a Victorian health service
- Victoria is responsible for monitoring clinical governance in AWH
- the Victorian Chief Psychiatrist may give directions to AWH.

The Victorian Chief Psychiatrist is supported by the Chief Mental Health Nurse and authorised staff in the Office of the Chief Psychiatrist.

Staff across AWH are encouraged to:

- adopt a collaborative approach to visits by the Victorian Chief Psychiatrist, the Chief Mental Health Nurse or staff from the Office of the Chief Psychiatrist
- assist with any inquiries made by the Victorian Chief Psychiatrist, the Chief Mental Health Nurse or staff from the Office of the Chief Psychiatrist during a visit

- provide reasonable assistance to the Victorian Chief Psychiatrist, the Chief Mental Health Nurse or staff from the Office of the Chief Psychiatrist to carry out his or her role.
- adopt a collaborative approach with Murrumbidgee LHD to develop local protocols for collaboration on matters including but not limited to clinical incidents, transfer of patients and shared service catchments. These local arrangements will comply with relevant interstate agreements where required.

In accordance with the purpose of this MOU and as permitted by law, AWH will notify the Victorian Chief Psychiatrist of the following matters at AWH with the details and within the timelines specified by the Chief Psychiatrist:

- a. reportable deaths including any deaths which are subject to a coronial inquest and any recommendations arising out of the inquest
- b. adverse events related to statutory practices
- c. the use of restrictive interventions, including seclusion and bodily restraint
- d. ECT performed on any person over the age of 18 years
- e. ECT performed on any person under the age of 18 years
- f. incidents of sexual activity, sexual harassment or sexual assault of any person that occurs within an inpatient mental health service setting.

These reporting conditions are in addition to any statutory reporting requirements under either the *Mental Health Act 2014 (Vic)* or the *Mental Health Act 2007 (NSW)*.

Reportable death means an unexpected, unnatural or violent death (including suspected suicide) of a person receiving mental health services from AWH.

In accordance with the purpose of this MOU and as permitted by law, AWH will notify Safer Care Victoria of the following matters at AWH with the details and within the timelines specified by Safer Care Victoria:

- a. sentinel events. Sentinel event means a sentinel event contained in the National Sentinel Events List and for the purposes of mental health reporting also includes 'other catastrophic' incidents with a severity rating 1 (ISR 1).

AWH will regularly report on all other quality and safety issues in accordance with the IGA.

6. Communication

The Victorian Chief Psychiatrist and the Executive Director, Mental Health Branch, NSW Health will meet as required to discuss the delivery of mental health services at AWH and the operation of this MOU, including:

- informing each other about any current or proposed quality and safety initiatives
- assessing the effectiveness of the quality and safety arrangement/framework
- identify opportunities for continual improvement and/or the sharing of information and expertise

- reporting on any quality and safety issues.

NSW Health System Management Branch monitors AWH performance through the quarterly Victorian Performance Report against agreed KPIs. These meetings are held on a quarterly basis.

7. Handling of complaints

Complaints about the provision of mental health services provided by AWH in services located in NSW can be referred to the Health Care Complaints Commissioner established under Part 5 of the *Health Care Complaints Act 1993* (NSW). Any person, including persons accessing services through AWH in NSW, may seek resolution of any complaint by the Health Care Complaints Commissioner.

Any concerns or complaints about the provision of mental health services provided by AWH in services located in Victoria can be referred to and heard by the Mental Health Complaints Commissioner. The Mental Health Complaints Commissioner is a specialist independent complaints body established under the *Mental Health Act 2014* (Vic) which accepts, assesses, manages and investigates complaints relating to mental health service providers and endeavours to resolve complaints using formal and informal dispute resolution, including conciliation.

8. Review

NSW Health and DHHS will conduct an initial review of this MOU 12 months after the date of execution and subsequent to that, at regular intervals not exceeding five years or as agreed between the parties.

Either party may reasonably request a review of this MOU at any time via the Strategic Planning Committee formed under the IGA.

9. Which policies apply to AWH mental health services

Mental health services provided in NSW, including those provided as part of AWH, will adhere to all applicable NSW policies. In addition to those policies, AWH mental health services in NSW are to comply with:

(1) All Chief Psychiatrist Directions (including but not limited to):

- a. Victorian Chief Psychiatrist Direction 2016/01: Staffing requirements for safe practice where patients are in locked areas within mental health in-patient units, November 2016.
- b. Victorian Chief Psychiatrist Direction 2017/01: Appropriate locations for the use of seclusion in designated mental health services, November 2017.

(2) All Chief Psychiatrist Advisory Notices (including but not limited to):

- a. Chief Psychiatrist Clinical Practice Advisory Notice: Prone Restraint, June 2013.

- b. Chief Psychiatrist's Clinical Practice Advisory Notice: Criteria for searches to maintain safety in an inpatient unit: for patients, visitors and staff, May 2018.

(3) The following Chief Psychiatrist guidelines:

- a. Chief Psychiatrist's guideline: Surveillance and privacy in designated mental health services, September, 2018.
- b. Chief Psychiatrist's guideline: Reducing adverse medication events in mental health services, 2018.

Signatories of the Memorandum of Understanding

SIGNED for and on behalf of the Department of Health & Human Services (Vic):

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Signature of Kym Peake

Secretary to the Department of Health & Human Services (Vic)

Date: 22/11/2018

SIGNED for and on behalf of NSW Health:

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Signature of Elizabeth Koff

Secretary, NSW Health

Date: 31/01/2019